

**BEFORE THE  
STATE OF CALIFORNIA  
OCCUPATIONAL SAFETY AND HEALTH  
APPEALS BOARD**

In the Matter of the Appeal of:

THE HERRICK CORPORATION  
P. O. Box 9125  
Pleasanton, CA 94566

Employer

Docket No. 97-R1D3-2604

**AMENDED DECISION  
AFTER RECONSIDERATION**

Pursuant to the Peremptory Writ of Mandate issued on November 15, 2005 by the Superior Court of California, County of Sacramento, Case No. 01-CS00589, the Occupational Safety and Health Appeals Board (Board) hereby reconsiders the Decision After Reconsideration issued in the above captioned matter. The Board sets aside and vacates the portion of the Decision After Reconsideration issued March 28, 2001 finding that the violation of section 1632(b) was a repeat violation<sup>1</sup>.

Further, the Board holds that for a violation to be classified as a repeat violation, the conduct of the earlier violation must have occurred within a period of three years immediately preceding the conduct resulting in the later violation. Once a period of three years has passed since the date of the conduct resulting in the earlier violation, that earlier violation may no longer be considered as an earlier violation for the purposes of Title 8, California Code of Regulations, section 334(d)(1).

The Board finds that the violation of section 1632(b) is established as a serious violation. A civil penalty of \$1,310<sup>2</sup> is assessed.

CANDICE A. TRAEGER, Chairwoman  
MARCY V. SAUNDERS, Member  
ROBERT PACHECO, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: February 14, 2006

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<sup>1</sup> The only issue for reconsideration in this matter was the timing of a repeat violation and when the three year period in Title 8, California Code of Regulations section 334(d) begins to run for the purposes of a repeat violation.

<sup>2</sup> Without the penalty for a repeat violation the gravity based penalty is \$3,750. With abatement and other credit the adjusted penalty is \$1,310.